



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 29 अगस्त, 1984/7 भाद्रपद, 1906

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT AND PRINTING DEPARTMENT

NOTIFICATION

Shimla-171002 the 4th August, 1984

No.2-8/83-Lab (Dup).—In exercise of the powers vested in him under Section 17 (1) of the Industrial Dispute Act, 1947, the Governor, Himachal Pradesh is pleased to publish the following award of the Himachal Pradesh Labour Court, Shimla-2, in the official Gazette as under :—

Before the Presiding Officer, Labour Court, Himachal Pradesh, Shimla.

Case No. 4/82

Shri Shyam Lal Azad

..Petitioner.

Versus

Management of Rosin & Turpentine Factory, Bilaspur, H.P. ..Respondent.

Present: Shri P.L. Bery AR of the Petitioner.

Shri B.D. Sharma AR of the Respondent.

AWARD

Shri Shyam Lal Azad joined the service of the Respondent Management as a clerk in pursuance of his appointment order dated 4-12-1974 passed by the Managing Director of the

Himachal Pradesh State Forest Corporation, Shimla, the copy of which is at Annexure RA of the petition. The appointment was made against a permanent post and he was put on probation. His services were terminated without assigning any reasons whatsoever on 19-8-1977. Shyam Lal Petitioner filed an appeal against the termination of his services, but this appeal was not forwarded to the appropriate authority because it is barred by limitation. Shyam Lal put in various representations/petitions in order to ventilate his grievances to the Managing Director, Secretary (Forest) and Forest Minister but all these representations/petitioner have also not borne any fruitful result favouring the petitioner.

I have received a reference *vide* Notification No. 8-5-81-Shram dated nil which was registered in this Court on 27-2-1982. The following question has been referred to this court for adjudication :—

Whether the termination of services of Shri Shyam Lal Azad employed by the Managing Director and other Management of Himachal Rosin and turpentine Factory Bilaspur and Himachal Pradesh State Forest Corporation is justified and in order. If not what relief and amount of compensation Shri Shyam Lal is entitled to ?

It may be mentioned that this reference is in Hindi and is not properly worded. The translation of this reference is attempted and is stated herein above. Notice to the parties were issued by me and both the parties have been appeared in this Court. In this Claim petition Shyam Lal has stated that the termination of services by the Respondent Corporation is absolutely illegal, unjustified and against the principle of natural justice and are required to be quashed and has stated that Shri V.P. Mohan, was not the Managing Director of the Corporation and has no authority to pass the impugned order and that before the order is passed the petitioner has not been afforded any opportunity. He was appointed on probation for a period of 2 years and that this period was not extended and that the after period of probation he is deemed to have confirmed and that the termination is to be set aside. It may be mentioned that Shyam Lal had filed the Civil Writ Petition in the High Court of Himachal Pradesh but the same was dismissed in limine as the Himachal Pradesh Forest Corporation is not a state within the meaning of article 12 of the constitution. The Respondent Management filed a reply and resisted this petition. The reply of Corporation is not self contained. It has been referred that during Conciliation proceedings the Respondent Management had filed a reply before the Conciliation Officer and that reply may be treated the reply to this petition also. The copy of the reply has however been filed along with the reply. The Respondent Management has justified the termination of services of Shri Shyam Lal on the ground of his being on probation and his having not been confirmed. Reference to service Rules and by laws Governing the service condition of the Petitioner has also been indicating to justify the order of termination.

From the averment of the parties, the following issues arose and were framed by me on 12-6-1982 :—

1. Whether the order of termination of the services of the petitioner is in valid, illegal and void, if so, to what relief the petitioner is entitled to ? OPP.

2. Relief.

Findings—

Issue No 1.

The petitioner has appeared as PW 11 and tendered in evidence Ex. P-1 to P-10. The petitioner has substantiated his averments made in the petition. The Respondent Management

has lead no evidence in rebuttal. I have heard the authorised representatives of the parties. It is the admitted case of the parties that the petitioner was appointed as clerk against a permanent post *vide* order Ex. RA to the petition and his services were terminated on 19-8-1977 *vide* order Ex. P-3. It has been urged by the authorised representatives of the petitioner that the termination of the services of petitioner who is admittedly an industrial worker is in fact the retrenchment and that the procedure for retrenchment industrial worker has been provided under section 25-F of the Industrial Dispute Act, 1947 which has been not followed and therefore this retrenchment is not a retrenchment in the eye of law and he may be deemed to be in service in spite of the termination order Ex. P-3. The AR of the Respondent Management has contended that the petitioner was on probation and he has not been confirmed and his service could be terminated by Respondent during the probation period before his confirmation.

I have also gone through the written arguments filed by the AR of the Respondent Management. The crux of arguments has been stated by me as above. I am not inclined to agree with the arguments advanced by the AR of the Respondent Management. In my view the order of termination of services of the petitioner cannot be upheld and it may be quashed as it has not been passed according to law and service rules applicable to the petitioner. The order Ex. P-3 is in fact the order of retrenchment for all purpose and contents. The term "retrenchment" has been defined in section 2(o) of the Industrial Disputes Act, 1947 as under:—

2(o) "retrenchment" means the termination by the employer of the service of the Workman or any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include—

- (a) Voluntary retirement of the workman; or
- (b) retrenchment of the workmen on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.

The bare reading of the definition specifically the expression "termination of services for any reason whatsoever" used in the definition covers any kind of termination of services except those mentioned in clauses (a), (b) and (c). The retrenchment has to be effective by following the prescribed procedure. The relevant section is section 25-F of the Industrial Disputes Act, 1947 which reads as under:—

25-F Conditions precedent to retrenchment workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until :—

- (a) the workman has been given one month's written notice indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;
- (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months ; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by Notification in the Official Gazette).

In the present case, the services of the petitioner has been retrenched. His services has not been terminated because of the penalty inflicted by way of disciplinary action. He has not been retired either voluntarily or on superannuation nor his services has been terminated

because of ill-health. The termination of services of the petitioner is, therefore, retrenchment pure and simple. He has not been given any notice nor has been paid any wages as is required under section 25-F of the Industrial Disputes Act, 1947. Therefore the termination of service is invalid and bad in law.

The main contention of the write full of the Respondent Management is that the Petitioner was on probation and the termination of services is because of his being not found fit and suitable for the job and the order of termination could be passed under the Rules i.e. Himachal Pradesh Forest Corporation Ltd. Rules of the service of the employees. In the order Ex. P. 3, it is not mentioned that the services of the petitioner were being not terminated because he was found unfit unsuitable for the job. Therefore, the contention of the AR of the Respondent Management is without any merit.

Moreover the petitioner admittedly has put in more than 240 days service. His services cannot be terminated in the way it has been done. The services of the Industrial worker who has put in 240 days services cannot be terminated without complying the conditions provided in section 25-F of the Industrial Dispute Act, 1947. Again the appointment of the petitioner was against a permanent post but it was on probation. Even if the petitioner was working on daily wages on muster roll or was a temporary worker his services cannot be terminated otherwise than following the procedure laid down under section 25-F of the Industrial Disputes Act, 1947. This views find sport in various Supreme Court ruling including AIR 1982 SC-1150, AIR 1982 SC-854, AIR 1980 SC 1219, (1983) ILLO-337 ; (1982) ILLO 330; AIR 1978-SC-8 and AIR 1983 SC-1320.

The AR of the respondent Management has cited AIR 1980 SC-42 and AIR 1980 SC-1242 in support of his contention that the services of the probation can be terminated on the ground of unsuitability with all the respects if I am in a position to say so. I may submit that the law laid down in cases by the Hon'ble Supreme Court is not relevant in the facts and circumstances of the present case. In the authority cited by the AR of the Respondent Management the Services of the Government servant, being a doctor and the other being a judicial Officer were terminated. The service termination were not these of Industrial worker. The provisions of Industrial Disputes Act, 1947 were not relevant in these cases. The argument of the AR of the Respondent Management is therefore without any merit. The authority cited are of no avail in the present case.

No other point has been urged before me not it arises either from the averments of the parties or from the arguments addressed me verbally or submitted in writing.

In view of those circumstances I hold that the termination of services of the petitioner is illegal, and unjustified. The order of termination Ex. P-3 is liable to be quashed. I decide this issue accordingly in favour of the petitioner and against the management.

RELIEF

In the result, the reference may be answered accordingly. The services of the petitioner have been terminated wrongly and illegally. The order of termination of services of the petitioner is no order in the eye of the law. The petitioner will be deemed to be in service continuously without any break in spite of the order Ex. P-3 terminating his services w.e.f. 19-8-1977. The petitioner will be entitled to claim all the back wages with all the services benefits which flow from the continuity, of his services including the benefits of increments, seniority, pay

revision, consideration of promotion, provident fund, gratuity, bonus etc. etc. The copy of the award may be supplied to the parties free of cost as usual.

Announced on the 17th day of June, 1984.

S. S. KANWAR,
Labour Court, H.P.
17-6-84,

By order,
R. K. ANAND,
Secretary (Labour).

TECHNICAL EDUCATION VOCATIONAL AND INDUSTRIAL TRAINING DEPARTMENT

NOTIFICATION

Shimla-171002, the 11th July, 1984

No.2-43/83-STV.—In supersession of notification No. I & S-15 (III) 141/66, dated the 30th May, 1967, issued by the Industries Department and all other notifications issued by this department, in this behalf, the Governor, Himachal Pradesh is pleased to constitute the Distt. Admission Selection Committee of the Industrial Training Institutes with the following composition for a period of 3 years for the ITIs located in the districts:—

- | | |
|--|--------------------------|
| 1. Deputy Commissioner of the District concerned or his representative. | <i>Chairman.</i> |
| 2. Member of the State Legislative to be nominated by the Deputy Commissioner of the District concerned. | <i>Member</i> |
| 3. Employment Officer of the District concerned | <i>Member</i> |
| 4. General Manager of the District Industries Centre concerned | <i>Member</i> |
| 5. One officer of Social Welfare Deptt., H.P. representing Sch. Castes/Sch. Tribes. | <i>Member</i> |
| 6. Principal of the Industrial Training Institute concerned | <i>Member-Secretary.</i> |

Note.—The Employment Officer of the concerned District where I.T.Is. not located, will act as Member-Secretary of the Admission Selection Committee.

2. At least three Members of the Committee will form the quorum.

The Governor, H.P. is further pleased to nominate the following non-official members, for the aforesaid Admission Selection Committee for I.T.Is, in H.P.) (Session 1984-85) for representing their respective Districts:—

1. Kangra District

1. Shri Vijay Singh,
2. Shri Milkhi Ram Goma

M.L.A.
-do-

2.	<i>Mandi district</i>	
1.	Shri Bhikham Ram	M.L.A.
2.	Shri Piroo Ram	-do-
3.	<i>Shimla district</i>	
1.	Shri Kewal Ram Chauhan	-do-
2.	Shri Singhi Ram	-do-
4.	<i>Sirmaur district.</i>	
1.	Shri Kush Parmar	-do-
2.	Shri Prem Singh	-do-
5.	<i>Chamba district</i>	
1.	Shri Thakur Singh	-do-
6.	<i>Solan district</i>	
1.	Shri R. P. Chandel	-do-
2.	Shri Raghu Raj	-do-
7.	<i>Bilaspur district</i>	
1.	Shri Gangu Ram	-do-
8.	<i>Hamirpur district</i>	
1.	Shri Dhani Ram	-do-
9.	<i>Una district</i>	
1.	Shri Hans Raj Akrot	-do-
10.	<i>Kullu district</i>	
1.	Shri Khub Ram	-do-

The non-official members shall receive T.A./DA in respect of the journeys performed by them in connection with the work of the above Committee as per detailed Rules in this regard stated at Annexure-A, as admissible to H.P. Government servants of the 1st Class.

This issues with the prior concurrence of the F.D. obtained *vide* their U.O. No. 900-FIN (C)-B (15) -3/83, dated 24-5-84.

By order,
B. B. TANDON,
Commissioner-cum-Secretary.

ANNEXURE-A

The non-official/official members of this Committee will be entitled to the travelling allowance and daily allowance as under :—

(I) MEMBERS WHO ARE NEITHER STATE GOVERNMENT EMPLOYEES NOR THE CENTRAL GOVERNMENT EMPLOYEES NOR HIMACHAL PRADESH UNIVERSITY/ AUTONOMOUS BODY EMPLOYEES.

(A) ALLOWANCE :—

(i) *Journey by Rail.*—He will be treated at par with Government servant of the first grade and will be entitled to actual rail fare of the class of accommodation actually used but not exceeding the fare to which the Government servant of the first grade is normally entitled *i.e.*, accommodation of the highest class, by whatever name it may be called, provided on the railway by the journey is performed except A.C.C., in accordance with the modified T.A. instructions issued *vide* O.M.No.Fin.(C) B (7) 14/78 dated 8th February, 1980 and other orders issued from time to time

(ii) *Journey by Road.*—He will be entitled to actual fare for travelling by taking a single seat in a public bus and if the Journey is performed by motor cycle/scooters, mileage allowance @ Re. 0.50 paise per k.m. for plain areas and 0.65 paise per k.m. for hilly areas and if the journey

is performed by own car/full taxi the members will be entitled to mileage allowance at Rs. 1.65 paise per km. in respect of the journeys in the plain & Rs. 2.00 per k.m. in the Hills subject to the provision of Government instructions issued vide F.D's O.M. No. FIN (C)-A(3)-1/80 dated 25th November, 1980.

(ii) In addition to the actual fare or mileage as per item (i) and (ii) above, a member shall draw daily allowance for the entire absence from his permanent place of residence starting with departure from that place and ending with arrival at that place at the same rate and subject to the same terms and conditions as apply to grade-I officer of the State Government.

2. (B) DAILY ALLOWANCE :

(i) Non-official members will be entitled to draw Daily Allowance for each day of the meeting at the highest rates as admissible to a Government servant of the first grade for the respective locality.

(ii) In addition to daily allowance for the day(s) of the meeting, a member shall also be entitled to daily allowance for the halt or on tour at out station in connection with the officers of the Committee as under :—

- | | |
|--|-----------|
| (a) If the absence from Headquarters does not exceed 6 hours. | ... Nil |
| (b) If the absence from Headquarters exceed 6 hours,
but does not exceed 12 hours | ... 70% |
| (c) If the absence from Headquarters exceeds 12 hours | ... Full. |

3. (C) CONVEYANCE ALLOWANCE :

A member resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowance on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid the controlling officer should verify the claims and satisfy himself after obtaining such details as may be considered necessary that the actual expenditure was not less than the amount claimed.

If such a member used his own car, he will be granted mileage allowance at the rates admissible to officials of the 1st grade subject to maximum of Rs. 10.00 per day

4. The travelling and daily allowance will be admissible to member on production of certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

5. The member will be eligible for travelling allowance for the journey actually performed in connection with the meeting of the Committee from and back to the place of their permanent residence to be named in advance. If a member performs a journey from a place other than the place of his permanent residence after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting whichever is less.

6. The provisions of Rule 4.17 and 6.1 of the H.P. Treasury Rules will apply *mutatis mutandis* in the case of over payment made on account of travelling allowance to non official members.

(II) OFFICIAL MEMBERS.

The official members of the Board will be entitled to T.A./D.A. admissible to them according to the rules applicable to them for attending the meetings from the respective Department.

The Director Technical Education, Vocational & Industrial Training, H. P. Sundernagar (District Mandi) will be the controlling officer in regard to the countersigning of the T.A. bills of the non-official members and T.A. Bills of these members will also be prepared in the Directorate of Technical Education, Sundernagar. The expenditure will be debitable to the respective head of the Directorate.

CORRIGENDUM

Shimla-171002, the 28th July, 1984

No. 2-43/83-STV.—Please *delete* Sl. No. 2 of the composition “Member of the State Legislative to be nominated by the Deputy Commissioner of the District concerned” and read with S. No. 1 to 5 *instead of* 1 to 6 appearing in this department Notification of even number, dated the 11th July, 1984.

By order,
B. B. TANDON,
Commissioner-cum Secretary.